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COMMITTEE AGAINST TORTURE

Fourteenth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 215th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 27 April 1995, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.215/Add.1.

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GE.95-12565 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Initial report of Guatemala (CAT/C/12/Add.5)

1. The CHAIRMAN said he wished to inform the Committee that he had been approached that morning by the Ambassador of Guatemala, who had offered his apologies to the Committee and said that unfortunately his delegation would not be able to attend the meeting the following morning in order to present its report. The Ambassador had given him a letter, which the Secretary would read out to the Committee later in the meeting.

2. He (the Chairman) expressed surprise that, although on 21 April 1995 a list of the members of the delegation of Guatemala had been addressed to the Committee, the Guatemalan representative had only informed him on the day prior to the scheduled consideration of the report that the delegation was unable to attend. Such behaviour was neither laudable nor courteous, and he suggested that the Committee should write to the Government of Guatemala to express its displeasure.

3. Mr. SORENSEN (Alternate Country Rapporteur) said he very much regretted that the Committee would not take up the report the following day. A considerable amount of work had been done, especially by the Country Rapporteur and himself in preparation for the discussion of the report and that work would have to be repeated. More importantly, the report of Guatemala was already two and a half years late and conditions in that country were such that a discussion of the report at the present juncture would have been extremely valuable. He did not understand why a discussion of the report would not be possible since the representative of Guatemala had been present that day and the Committee had often dealt with reports when only a single representative had been able to attend the meeting. He presumed that the report would be discussed at the following session, by which time over three years would have elapsed since the deadline for its submission. He drew attention to the fact that article 19 of the Convention made no provision for a delegation having to be present during the discussion of the report. He proposed that the Committee should deal with the report at its following session whether the delegation was present or not.

4. Mr. GIL LAVEDRA (Country Rapporteur) said he too deplored the absence of the delegation of Guatemala. For a considerable time he had been studying all the documentation that had been made available. Most important, however, was the fact that Guatemala was experiencing major problems and the Committee could have studied the report and made a valuable contribution. He suggested that in its letter of reply the Committee should say that it deplored the absence of the Guatemalan delegation and that it would definitely study the report at the following session. It should request Guatemala to ensure that a new report was submitted in order to allow the Committee to ascertain whether the State was abiding by the commitments it had undertaken when it had ratified the Convention. That was all that should be said. It could inform the representative of Guatemala that it was expecting the delegation to be

present in November in order to present the country report. As he had not read the letter, he was not aware of the reasons for the delay. Perhaps the delegation wished to make additional comments, which he supposed could be useful.

5. The CHAIRMAN requested the Committee Secretary to read out the letter from the Permanent Mission of Guatemala.

6. Mr. BRUNI (Secretary of the Committee) said that he would read out the letter in Spanish.

7. The letter was addressed to the Chairman and had been sent by Mr. Vicente Arranz, President of the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH). Mr. Arranz stressed the importance attached by Guatemala to compliance with the commitments it had accepted at the international level in the field of human rights. Under its Constitution those commitments prevailed over domestic legislation. Guatemala had acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1990 in order to pursue a policy which would ensure the full realization of its citizens' rights. It also received advisory services from the United Nations Centre for Human Rights with the aim of strengthening its policy for the promotion of human rights. The Government of Mr. Ramiro de Leon Carpio was currently working to guarantee the full realization of human rights and to consolidate democracy and the rule of law.

8. That was the first time Guatemala had prepared a report relating to the Convention against Torture. Given the need for optimum cooperation between the Government and the Committee, the Guatemalan authorities considered that that initial report did not cover all the necessary ground in order to provide an objective description of the current situation in Guatemala. He accordingly requested the Committee to allow Guatemala to expand that report and to submit an addendum prior to the Committee's following session for discussion at that session. The report would thus be genuinely useful to the Committee and would enable his Government to give a comprehensive picture of the situation. He expressed the hope that the Committee would accede to his request and reiterated the desire of his Government to continue to cooperate with the Committee.

Second periodic report of Italy (CAT/C/25/Add.4) (continued)

9. At the invitation of the Chairman, Mr. Torella di Romagnano, Mr. Citarella, Mrs. Palumbo, Mrs. Terribile and Mrs. Passannanti (Italy) took seats at the Committee table.

10. Mr. CITARELLA (Italy) said he would begin with a general remark. In the Amnesty International report of April 1995 that was before the Committee there was an acknowledgement that over the previous two years cases of ill-treatment had diminished in Italy and that the cases reported to Amnesty International had concerned only ill-treatment by specific individuals and had no general implications. His delegation had raised the same point during the discussion of the question in 1992. All the cases reported concerned ill-treatment in prisons or other detention centres by police officers or prison personnel; they had already been considered at length in the appropriate forums.

11. The Special Rapporteur on the question of torture had sent the Italian Government a request for information on all cases that had been reported to him. The information had been provided on 11 November 1994 and in his final report to the General Assembly the Special Rapporteur had acknowledged that the Italian Government had been extremely thorough in providing all the information required on disciplinary and judicial procedures.

12. An Amnesty International report that had been received in Rome the previous day included a few cases that had allegedly occurred in 1994 and early 1995, but most cases included in that report had occurred over the previous four or five years and some had already been closed after final sentences had been pronounced against the persons found guilty of ill-treatment.

13. Three points that had been raised in 1992 deserved some further discussion. The first was the position of the Convention within the Italian domestic system; the second concerned the crime of torture in Italian legislation; and the third related to compensation. To his knowledge, there had been no changes over the previous three years relating to those points.

14. The Convention had become a national law in the same way as all other conventions and treaties ratified by Italy. It had a special status between constitutional laws and ordinary laws. The Constitutional Court had reaffirmed the principle that no Italian law could modify any provision of the Convention. The provisions of the Convention thus enjoyed preferential status and were defended in the Italian legal system from any possible encroachment by a subsequent Italian law.

15. On the question of introducing the offence of torture into Italian legislation, he wished to clarify a point raised by a Committee member who had considered that the use of the expression "ad hoc" did not accord a sufficient degree of respect to the Convention. That had not been the intention and perhaps reflected a mistake in English usage. The intention had simply been to add one further specific offence - torture - to the Penal Code, but not to confer on the offence of torture a position of lesser significance. The reasons why torture had not yet been introduced into Italian legislation were well known and had been discussed on a number of occasions. He again wished to stress Italy's full observance of article 1 of the Convention. Some of the questions raised had concerned the point whether, according to Italian legislation, mental torture was considered an offence. Article 582 of the Penal Code categorized as a criminal offence any act that caused personal injury resulting in either physical or mental illness. Any form of ill-treatment or torture, and that included mental torture, was considered to be an offence under Italian legislation.

16. He had no additional comments to make regarding the fact that Italian legislation provided no form of compensation for victims of torture or ill-treatment. His Government had tried to introduce such legislation but had so far been unsuccessful. Compensation was provided in all cases in which there was detention due to error or negligence by a judge or other public official. Compensation could be awarded to victims of wrongful imprisonment and amount to a maximum sum of 100 million lire. A special rule provided that if a judge's conduct was negligent or if serious mistakes were made in the

interpretation of the law, then the State would be considered responsible and would have to pay compensation. The State could subsequently request reimbursement from the responsible judge. That form of compensation was expressly provided for in articles 314 and 643 of the Code of Criminal Procedure.

17. Some members had raised the question of the length of custody in a police station and the rights of detainees. The period for which a person could be detained in a police station was 24 hours and could not be extended. Within that 24-hour period the individual had the right to request the assistance of a legal counsel, to see a doctor and to appear before a judge. The judge then had a further period of 24 hours in which to confirm whether or not that person should be further detained, either because a judicial investigation was under way or because there were sufficient grounds for him to remain in custody. The judge either had to extend the detention of the person by means of a special order or release him. There were thus two specific deadlines, one of 24 hours and one of 48 hours.

18. The members of the various police forces were issued with instructions concerning their duties and obligations with respect to detainees. During the detention period a person could be interrogated about the offence he was alleged to have committed, and that nearly always occurred in the presence of a legal counsel. If a legal counsel was not present, any information obtained during the interrogation could not be subsequently used. If the judicial police wished to interrogate detainees, they usually had to have a specific mandate to do so from a judge.

19. It had been mentioned that the police could only arrest individuals for offences considered to be serious or if a person had been caught in flagrante delicto, and that for many offences arrest was not mandatory. The Attorney-General's Office must be informed of any arrest immediately. There was a special register in every police station where a record must be kept of the date and time of arrest, the name and details of persons arrested, the reasons for the arrest and all subsequent action taken, including the calling of a defence counsel or a doctor. The European Committee for the Prevention of Torture had found that those registers were properly kept.

20. Another point raised by many members concerned the training of police officers, prison personnel and doctors. So far no special provisions had been made to provide doctors with special training for cases of torture or ill-treatment. Doctors conducted their investigations in accordance with their own principles. Training courses were provided for all other persons who might have a detainee in their care. The Ministries of Justice and the Interior had provided many training courses relating to their respective functions, each ranging from 30 to 180 days in duration. Training was an extremely important matter but it should not be forgotten that although training could be very thorough, there would always be certain individuals who did not comply with the principles taught and would still commit acts of ill-treatment, even though they were aware that they should not. There were no differences between the Convention against Torture and Other Cruel, Inhuman

or Degrading Treatment or Punishment, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the national laws of Italy, with the single exception that the offence of torture was not specifically incorporated within Italian legislation.

21. Italy had several police forces with distinct mandates: the Carabinieri (which was responsible to the Ministry of Defence); the Guardia di Finanza (which dealt with fiscal and administrative offences, but sometimes also took part in investigations); the Polizia Urbana, or metropolitan police; and lastly the Penitentiary Police. The judicial police was not a force as such: it was a term to describe the members of other forces who received a special mandate from a judge to execute an action in connection with a judicial investigation. The Italian Constitution gave judges the power to make use of the judicial police for their purposes. All high-level members of the various police forces were as a rule members of the judicial police. But judges could also designate less senior members to assist them in their work.

22. The special prison regime was a temporary measure adopted to prevent members of the Mafia and other criminal organizations from carrying on their activities from within prison walls, formerly a widespread phenomenon in Italy. When the relevant legislation had been discussed in Parliament, it had been stressed that under no circumstances should invocation of the special regime constitute an attempt to deprive a prisoner of his fundamental freedoms. In fact, the freedoms allowed to such a prisoner were largely the same as those accorded to others, with the sole exception that he was barred from free contact with the outside world. He could, however, remain in contact with his family, and with counsel, doctors and service personnel. Furthermore, any person placed under that regime could apply to a court for a review of his case.

23. The Italian Code of Criminal Procedure forbade the invasion of an individual's privacy, which included the interception of telephone calls. If, however, a judge deemed that there was sufficient cause to conclude that a crime was being organized, or expected to obtain evidence regarding a crime under investigation, he could take a formal decision to intercept and record telephone communications. He was required to specify the conditions under which such measures could be carried out: by whom, with what purpose and for what duration. Only if those conditions were fulfilled in conformity with the terms of the judicial order could recordings be used as evidence in a criminal investigation.

24. It should be clear that the Italian Government was in no circumstances empowered to expel foreigners. However, in the interests of avoiding criminal actions against foreigners for lesser offences and reducing the number of foreigners detained in Italian prisons, it had in 1993 enacted a law which stipulated that a person involved in a lesser offence could be deported to his country of origin or to a third country, but only if he so requested. Furthermore, a 1990 Act concerning stateless persons forbade the expulsion of any foreigner to his State of origin - even if he so requested - if there existed any danger to his life or personal liberty on the grounds of race, sex, language, nationality, religion, political opinion, or personal or social

status. In addition, the 1985 Schengen Agreement banned, in certain circumstances, the expulsion of foreigners to their State of origin; that practice was thus proscribed by both national and international instruments.

25. Statistics were available, and could be provided if the Committee so wished, on the number of refugees seeking asylum in Italy, and on the number of foreigners from European and non-European countries detained in Italian prisons, together with the reasons for their detention and their countries of origin.

26. A number of cases of abuse of police authority had been raised by such sources as Amnesty International and the Special Rapporteur. It should be reiterated that no cases of torture had been reported in Italy. There were, however many degrees of ill-treatment and some cases were too minor to merit criminal prosecution. In more cases heavy sentences had sometimes been imposed. One case of note described by Amnesty International arose from the work of a specially-appointed governmental committee which had investigated allegations of ill-treatment in a prison in Naples. Through the intervention of the Ministry of Justice, a complaint had been filed and criminal charges entered against 65 members of the prison staff for the physical and mental abuse of prisoners; that trial was scheduled for 2 May. Another case was that of Tarzan Sulic; in that instance, the judge found the carabiniere in question guilty and sentenced him to imprisonment for a period of 1 year, 5 months and 10 days. His sentence had been suspended, as was the rule in first convictions. Finally, in the case of Moufida Ksouri, the French woman of Tunisian origin, who had been sexually assaulted at the Italian/French border by border officials of both countries, the Italian courts had sentenced each of the two Italians involved to five years' imprisonment and the payment of legal costs; they had also been barred from further public service for the remainder of their lives.

27. Various disciplinary measures were envisaged for the abuse of authority by police. In serious cases, it fell to a judge to determine whether the officer in question would be permitted to remain on the force. For less serious cases, the measures envisaged included suspension, a fine, transfer or, as a last resort, dismissal.

28. The CHAIRMAN invited members of the Committee to put further questions to the Italian delegation.

29. Mrs. ILIOPOULOS-STRANGAS said that she had closely studies all the cases of police abuse that had in fact been prosecuted. The only one in which a severe sentence had been imposed was that concerning Moufida Ksouri, the French woman of Tunisian origin who had been sexually assaulted; the Italian officials convicted of the assault had each been sentenced to five years' imprisonment. And yet, in the case involving the death by gunshot of Tarzan Sulic, an 11-year-old boy, the carabiniere had received a suspended sentence. There seemed to be no correlation between the two cases: the murder of a child should not be dealt with more leniently than a sexual assault. Furthermore, if crimes of that nature regularly gave rise to suspended sentences under the Italian legal system, there would be no deterrent to the commission of similar crimes by other police officers.

30. Turning to the concept of torture as reflected in Italian domestic legislation, she said that the representative of Italy had cited an article of the Code of Criminal Procedure which apparently explained why torture was not a specific offence under Italian law. She requested the Italian delegation to read out that article to the Committee.

31. Mr. CITARELLA (Italy), referring to the case of the 11-year-old boy who had been killed accidentally during a struggle with a police officer, said that the officer had been found guilty of mishandling his weapon.

32. In connection with the article of the Penal Code which explained why torture was not a specific offence under Italian law, he said that under its provisions a person who caused another person physical or mental injury was liable to imprisonment for a period of between three months and three years.

33. Mrs. ILIOPOULOS-STRANGAS said that she could not see how that article indicated that there was no need for the Italian Penal Code to contain a specific provision corresponding to the concept of torture embodied in the Convention.

34. Mr. SORENSEN said it was the duty of the State party to ensure that medical personnel received proper training. He would welcome information on whether the Italian Government thought that the Minister of Health or the Minister of Justice should write to the various medical faculties and inform them that they had such an obligation.

The public meeting was suspended at 4.40 p.m. and resumed at 5.40 p.m.

35. The CHAIRMAN invited the Country Rapporteur to introduce the conclusions and recommendations of the Committee against Torture on the second periodic report of Italy.

36. Mr. GIL LAVEDRA (Country Rapporteur) read out the following conclusions and recommendations:

"The Committee considered the second periodic report of Italy (CAT/C/25/Add.4) at its 214th and 215th meetings, held on 27 April 1995 (see CAT/C/SR.214 and SR.215), and adopted the following conclusions and recommendations:

A. Introduction

The Committee welcomes the submission of the second periodic report of Italy and is grateful for the excellent oral statement introducing it. The Committee nevertheless notes that the report is not fully in conformity with the Committee's guidelines for such reports (CAT/C/14), particularly regarding the provision of information and answers requested previously. In addition, the general report containing basic data on the State party required by the guidelines has not been appended. Despite this, the Committee was able to hold a constructive dialogue with the delegation which met many of the concerns expressed.

B. Positive aspects

The Committee notes with great satisfaction the firm commitment of Italy to the defence of human rights, as reflected in its accession to many conventions, at both the regional and global levels.

It also notes that the decision to authorize the publication of the report of the European Committee for the Prevention of Torture, in connection with its visit to Italy, is a very constructive step.

The substantial increase in the contribution which Italy has made to the United Nations Voluntary Fund for Victims of Torture is very gratifying.

The provisions of Act No. 296 on the work of prisoners, the new alternatives to detention, such as house arrest, and the rules under Act No. 492 regarding the transfer of prisoners are also encouraging.

Lastly, the State party is to be congratulated on the total abolition of capital punishment in its legislation.

C. Factors and difficulties impeding implementation

Like the Human Rights Committee, the Committee notes a certain trend towards discriminatory treatment by sectors of police and prison staff towards foreigners, as reflected in violations of their rights. Moreover, the involvement of a large number of public officials in acts of corruption is not a positive factor.

D. Subjects of concern

The Committee notes with concern the persistence of cases of ill-treatment in prisons and by police officers. It even notes a dangerous trend towards a degree of racism since the victims are either nationals of certain foreign countries or are members of minorities.

Non-governmental organizations of proven trustworthiness have drawn the attention of the Committee to a number of serious developments including torture, resulting in some cases in the death of detainees - and even juvenile detainees. The punishment of the officers concerned does not seem proportionate to the seriousness of those acts.

Similarly, a certain amount of alarm is caused by the number of unconvicted prisoners, the overcrowding in prisons and the suspension, albeit temporary, of humanitarian standards in the treatment of prisoners.

E. Recommendations

The Committee makes the following suggestions to the State party:

1. That it should continue to consider the possibility of including in its criminal legislation the concept of torture as contained in the Convention.

2. That it should improve guarantees of the right of a torture victim to be compensated by the State and to be offered a rehabilitation programme.

3. That it should monitor the effective implementation of safeguards during pre-trial detention, including in particular access to a reliable doctor and legal assistance.

4. That it should ensure that complaints of ill-treatment and torture are promptly and effectively investigated, and that persons found responsible in such cases are adequately and effectively punished.

5. That more instruction and training programmes should be organized for law-enforcement officials and medical personnel.

The Committee also requests that it should be sent the legal instruments which were asked for and the other information requested by members (results of ongoing cases, statistics, judicial organization etc.), and hopes that the next periodic report will contain information on all measures adopted."

37. Mr. TORELLA DI ROMAGNANO (Italy) said that his delegation had listened very attentively to the conclusions and recommendations formulated by the Country Rapporteur. He assured the Committee that he would convey immediately to the competent authorities what had been said; the issues raised would be discussed at the forthcoming meeting of the Interministerial Committee on Human Rights in mid-May. Following that meeting, the recommendations would certainly be passed to the competent authorities for action. They would be taken fully into account in Italy's next report.

38. He had no specific comments to make on what had been said by the Country Rapporteur. He welcomed the positive aspects which had been stressed regarding action taken by Italy, particularly the abolition of capital punishment and the increased contribution to the United Nations Voluntary Fund for Victims of Torture. He assured the Committee that Italy would continue to cooperate with it sincerely and fully in the future.

39. The CHAIRMAN thanked the delegation of Italy for its cooperation in the consideration of its report.

The meeting rose at 5.55 p.m.